Selangor Coconut Bhd v Collector of Land Revenue, Kedah

HIGH COURT (ALOR SETAR) — LAND REFERENCE NO 15-19-85
MOHD HISHAMUDIN JC
3 OCTOBER 1994

Land Law *— Acquisition of land — Methods of valuation — Determination of market value — Land part of large estate — No independant title — Whether small lots can be used as comparables — Whether only estate lots can be used — Whether statutory restriction on transfer of estate land relevant factor in determining market value — Land Acquisition Act 1960 s 36(1) — National Land Code 1965 s 214A*

Part of the applicant's estate land ('the acquired land') was acquired by the government under the Land Acquisition Act 1960 ('the Act'). The acquired land was about 4.5 acres, and was part of a much bigger lot, which had an area about 1,532 acres ('the subject lot'). As compensation for the acquisition, the Collector of Land Revenue awarded RM9,000 per acre to the applicant. The applicant objected to the award and referred the matter to the High Court under s 36(1) of the Act, relying on the report prepared by their valuer which adopted the comparison method and claimed for RM25,000 per acre.

Held, raising the compensation amount to RM11,000 per acre:

(1) The report submitted by the applicant's valuer was largely descriptive, lacking in essential details such as category and restrictions of the land, and did not contain any analysis as to how the valuer arrived at the value of RM25,000 per acre.

(2) The lots submitted as comparables in the applicant's valuer's report were small lots and unsuitable as comparables since the subject lot was a very large estate. As the acquired land did not have an independant title, it could not be valued as a separate parcel unrelated to the remaining portion of the subject lot. The correct way of valuing the acquired land would be to determine the value of the subject lot first by using big lots as comparables, before determining the value of the acquired land.

(3) There was also a glaring difference between the sale prices of the comparables and the value assessed by the valuation department for the purpose of stamp duty. Thus, the values of the comparables could not be reliable indications of the fair market prices. Further, the sales transactions of the comparables happened a long time before the date of acquisition of the acquired land.

(4) As an estate and part of an estate, respectively, the subject lot and the acquired land were subject to the restriction on transfer under s 214A of the National Land Code 1965, and this was a pertinent factor in valuing the land. With the exception of two

lots, it was not stated in the report whether or not the comparable lots were estates or parts of an estate.

(5) On the other hand, the comparable lot submitted in the government valuer's report was acceptable. It was estate land and the sale transaction took place about a year prior to the acquisition. It was also fairly big, although only half the size of the subject lot. Using its sale price of RM9,605.42 per acre and rounding it off to RM10,000 per acre as the base value, the court made an upward adjustment of 10% for the time factor and another 10% for the size of the land. However, there was also a downward adjustment of 10%, since the land did not have a separate title, thus arriving at the value of RM11,000 per acre for the acquired land.

[Bahasa Malaysia summary

Sebahagian daripada estet pemohon ('tanah yang diambil') telah diambil oleh kerajaan di bawah Akta Pengambilan Tanah 1960 ('Akta tersebut'). Tanah yang diambil itu berukuran seluas lebih kurang 4.5 ekar, dan merupakan sebahagian daripada satu lot yang jauh lebih besar, iaitu seluas 1,532 ekar ('lot subjek'). Sebagai pampasan untuk pengambilan itu, Pemungut Cukai Tanah telah mengawardkan RM9,000 seekar kepada pemohon. Pemohon membantah terhadap award itu lalu merujukkan perkara ini kepada Mahkamah Tinggi di bawah s 36(1) Akta tersebut, bergantung pada laporan yang disediakan oleh penilai tanah mereka yang telah menggunakan cara perbandingan dan menuntut untuk RM25,000 seekar.

Diputuskan, menaikkan jumlah pampasan ke RM11,000 seekar:

(1) Sebahagian besar daripada laporan yang dikemukakan oleh penilai tanah pemohon adalah deskriptif, kekurangan perkara penting seperti kategori dan sekatan tanah, dan tidak mengandungi sebarang analisa tentang bagaimana penilai tanah tersebut mencapai nilai RM25,000 seekar.

(2) Lot tanah yang dikemukakan sebagai bandingan dalam laporan penilai tanah pemohon adalah lot yang kecil dan tidak sesuai digunakan sebagai bandingan kerana lot subjek itu adalah sebidang tanah estet yang sangat luas. Oleh kerana tanah yang diambil tidak mempunyai hakmilik berasingan, ia tidak boleh dinilaikan sebagai sebidang tanah yang berasingan yang tidak berkaitan dengan baki lot subjek yang tinggal. Cara yang betul untuk menilai tanah yang diambil itu ialah dengan memastikan nilai lot subjek terlebih dahulu dengan menggunakan lot yang besar sebagai bandingan, sebelum menentukan nilai tanah yang diambil itu.

(3) Terdapat juga perbezaan yang menonjol antara harga jualan lot bandingan dengan nilai yang ditaksirkan oleh bahagian penilaian untuk tujuan duti setem. Lantaran itu, nilai lot bandingan itu tidak boleh menjadi petunjuk harga pasaran yang boleh dipercayai.

Selain daripada itu, urusniaga jualbeli lot bandingan berlaku lama sebelum tarikh pemerolehan lot subjek tersebut.

(4) Sebagai sebuah estet dan sebahagian daripada estet masing-masing, lot subjek dan tanah yang diambil adalah tertakluk kepada sekatan atas pindahmilik di bawah s 214A Kanun Tanah Negara 1965, dan ini merupakan suatu faktor yang relevan dalam penilaian tanah tersebut. Selain daripada dua lot, laporan pemohon tidak menyatakan sama ada atau tidak lot bandingan itu merupakan estet ataupun sebahagian daripada estet.

(5) Sebaliknya, lot bandingan yang dikemukakan dalam laporan penilai kerajaan adalah sesuai dan boleh diterima. Ia merupakan tanah estet, malah urusniaga jualbeli yang terlibat juga berlaku kurang dari setahun sebelum pengambilan itu. Ia juga adalah agak besar, walaupun hanya separuh saiz lot subjek. Dengan menggunakan harga jualan sebanyak RM9,605.42 seekar dijadikan angka bulat RM10,000 seekar sebagai nilai asas, mahkamah membuat penyelarasan yang menaik sebanyak 10% atas sebab faktor masa, dan 10% lagi atas sebab saiz tanah tersebut. Walau bagaimanapun, terdapat juga penyelarasan yang menurun sebanyak 10% oleh kerana tanah tersebut tidak mempunyai hakmilik yang berasingan, demi mencapai nilai RM11,000 seekar bagi tanah yang diambil itu.]

[*Editorial Note*: The applicant has appealed to the Court of Appeal vide Civil Appeal No K–01–30–1994.]

Notes

For cases on acquisition of land, see 8 *Mallal's Digest* paras 891–919, 947–958; [1992] Mallal's Digest 1178–1180.

Cases referred to

Bertam Consolidated Rubber Co Ltd v Collector of Land Revenue Province Wellesley [1984] 1 MLJ 164 (folld)

Kumpulan Sua Betong Sdn Bhd v Ezan Sdn Bhd & Anor [1993] 2 MLJ 289 (distd)

New Serendah Rubber Co Ltd v Collector of Land Revenue Kuala Lumpur [1981] 2 MLJ 344 (folld)

Ng Tiou Hong v Collector of Land Revenue Gombak [1984] 2 MLJ 35 (folld)

Siah Brothers Plantation Sdn Bhd v Pentadbir Tanah dan Daerah Kuantan [1993] 3 MLJ 51 (folld)

Legislation referred to

Land Acquisition Act 1960 s 36(1)
National Land Code 1965 s 214A

Wong Chong Wah (*Skrine & Co*) for the applicant.
Hassan Lah (Kedah State Legal Adviser) for the respondent.

Cur Adv Vult A

Mohd Hishamudin J: This is a reference to this court under s 36(1) of the Land Acquisition Act 1960 on the applicant's objection that the compensation awarded by the Collector is inadequate. The Collector had made an award of RM9,000 per acre. The applicant is claiming for RM25,000 per acre. B

The scheduled land was acquired on 12 April 1984. It has an area of 4.5594 acres, and is part of a much bigger lot known as Lot 3291 HS(D) 240/1979, which has an area of about 1,532 acres. The subject lot (Lot 3291) is a freehold land, and its land use comes under the category of agriculture. The subject lot has an undulating terrain, and is planted with oil palm trees of about six years old. In turn, Lot 3291 is part of a large estate known as Ladang Batu Pekaka, which has an area of more than 3,000 acres. The lands in the immediate surrounding are mainly agricultural and residential (village type). At the time of the acquisition, the subject lot was within an agricultural zone. C D

The scheduled land is about 1,016ft from the main road, and access to the land is possible through an estate laterite road.

Both the applicant and the respondent submitted their valuation reports prepared by their respective valuers. Both valuers adopted the comparison method. I shall begin with the report of the applicant's valuer. E Having scrutinized the report, for reasons which shall be enumerated, I am of the view that the nine lots submitted therein are not suitable comparables. First, I find that none of the nine comparables are sufficiently described in the report, so as to enable the court to form an opinion as to their relevance or suitability as comparables. The information supplied in the report is superficial and lacking in essential details. There is no information F given on the identity of the parties to the transactions, the category of land use, whether there are any restrictions (eg whether they are Malay reservations or whether the permission of an authority is required) as to dealings, the status of the interests (freehold or leasehold), the accessibility, the public amenities available, the terrain, the stamp duty valuation (in G respect of three of the comparables), the actual usage of the land, or the location (whether within or outside a local council area).

Secondly, the comparables are small lots, whereas the subject lot is a very large estate. The sizes of these lots range from 0.25 acre to 3.3 acres. It would not be appropriate to value a large lot by using small lots as H comparables (*Ng Tiou Hong v Collector of Land Revenue Gombak* [1984] 2 MLJ 35; *New Serendah Rubber Co Ltd v Collector of Land Revenue Kuala Lumpur* [1981] 2 MLJ 344). It is true that in *Ng Tiou Hong* and *New Serendah Rubber*, the facts were slightly different, because in these two cases, the scheduled lands comprised the whole subject lots, whereas in the present case the scheduled land is only about four acres — a very small I portion of the subject lot. But the scheduled land could not be valued independently because it does not have a separate title. It could not be valued as a separate parcel unrelated to the remaining portion of the

subject lot (*Bertam Consolidated Rubber Co Ltd v Collector of Land Revenue Province Wellesley* [1984] 1 MLJ 164). In other words, in the present case, a valuer would have to determine the value of the subject lot first, before determining the value of the scheduled land (which could only be arrived at after making the necessary adjustments). This being the case, therefore, the principle enunciated in *Ng Tiou Hong* and *New Serendah Rubber* would, nonetheless, still be applicable in the present case.

Thirdly, as for three of the comparables (Lots 1790, 62 and 63), there were big differences between the value of the consideration under the transactions and the values assessed by the valuation department for the purpose of stamp duty. For Lot 1790, the transaction price was RM30,000, whereas the value as assessed by the valuation department was only RM7,500; for Lot 62, the transaction price was RM40,000, whereas the value as assessed by the valuation department was only RM8,500; and for Lot 63, the transaction price was RM380,000, whereas the value as assessed by the valuation department was only RM17,000. In view of these glaring differences, such values of considerations, therefore, could not be reliable indications of the fair market prices.

Fourthly, with the exception of Lot 70 (which was transacted in 1984), there was a long time lapse between the dates of the transactions of the comparables (1976,1977 and 1978) and the date of acquisition (1984) of the subject lot.

Fifthly, two of the comparables, namely, Lot 2710 on the south side of the Sungai Petani-Baling Road, and Lot 2710 behind the government clinic, are lease transactions, not sales. Comparables should be based on sales, not leases. In *Ng Tiou Hong,* Syed Agil Barakbah FJ (as he then was) said [at pp 37–38]:

> The safest guide is evidence of *sales* of similar lands of similar quality or position in the locality at or prior to the time of acquisition. The prices paid for such *sales* can be used as comparables subject to making allowances for all the circumstances. (Emphasis added.)

Sixthly, the scheduled land was part of an estate, whereas (with the exception of the portions referred to in the immediate preceding paragraph) it was not stated in the report whether the comparable lots were estates or parts of an estate. The court is, therefore, bound to assume that they are not estates. Being an estate, the subject lot, unlike the comparable lots, is subject to the restriction under s 214A of the National Land Code 1965 ('the Code'), and this is a pertinent factor in valuing an estate land (*Bertam Consolidated Rubber Co Ltd*). The learned counsel for the applicant submitted the case of *Kumpulan Sua Betong Sdn Bhd v Ezan Sdn Bhd & Anor* [1993] 2 MLJ 289. This case was not cited in his written submission, but was cited by way of a letter submitted to me subsequently. No argument was put forward in the letter as to the implication of *Kumpulan Sua Betong* on *Bertam Consolidated*; or in what way that case helps the applicant. It only stated that the former case was relevant. *Kumpulan Sua Betong* deals with the interpretation of s 214A. The Supreme Court in that case held that if an owner of an estate intends to sell a *portion* of an estate land to just *one*

person only, then s 214A does not apply to such transaction. Eusoff Chin SCJ (as he then was) in delivering the judgment of the court said at p 296:

> Our attention was drawn by the learned counsel for the appellant to sub-s (10A)(b) of s 214A of the National Land Code 1965. We find that this sub-s (10A) was inserted by Act A124 effective from 21 October 1969. Sub-section (10A)(a) created an offence which is committed by a proprietor of an estate land if he contravenes the provision of sub-s (1) of s 214A. Sub-section (10A)(b), however, creates a *presumption* that if a proprietor of an estate land executes an agreement to convey or dispose the estate land to two or more persons, or to convey or dispose any portion or portions of the estate land to one or more persons without the approval of the Estate Land Board, *he commits the offence* under sub-s (10A)(a) of s 214A. We have come to this conclusion because of the clear introductory words used by Parliament in enacting this sub-s (10)(A)(b) which are: 'For the purposes of this sub-section ...', which means, 'For the purposes of sub-s (10A) only', which in turn means for the purposes of proof of any offence in any prosecution under sub-s (10A)(a). The provision in sub-s (10A)(b) therefore cannot and should not be stretched to supplement the precise words used by Parliament in sub-ss (1) and (4) of s 214A. While we quite appreciate that the object of s 214A is to discourage the fragmentation of estate lands we are reminded that the court's function is to interpret, not to make law. We are also quite aware of the consequence that if an estate land is transferred to two or more persons an estate land is fragmented into two or more portions. But we are here dealing with the requirement of an approval of the Estate Land Board. That provision is to be found in sub-s (4) of s 214A which in clear, plain words stipulates that the application for approval is required only where the transfer, conveyance or disposal in any manner whatsoever of the estate land is made to *two or more* persons. In other words, where an estate land or only a portion of an estate land is to be transferred to one person, the Estate Land Board's approval is not required. If, therefore, there is any lacuna in the law, it must be corrected through legislative means.

However, whatever the learned counsel's purpose might be in submitting the case, and despite the fact that the decision in *Kumpulan Sua Betong* defines the limitations on the application of s 214A of the Code, one thing remains clear: the restriction on the transfer of estate lands imposed by that provision of the Code still exists, and *Bertam Consolidated*, which is a decision of the Federal Court, is still the relevant and binding decision for the present purpose as the facts of that case, like the present case, concerned land acquisition, whereas the facts of *Kumpulan Sua Betong* are not concerned with land acquisition, but with the validity of the transfer of a portion of an estate land.

Not only do I find the comparables unacceptable, the applicant's valuer also does not explain how he arrived at the value of RM25,000 per acre. Indeed, the report is largely descriptive and does not contain any analysis at all.

In the light of the above reasons, I am of the view that the applicant has failed to make out a prima facie case.

However, as the respondent has also submitted comparables in his report (that is the government valuer's report), I have proceeded to

determine the value of the scheduled land on the basis of that report. The government valuation officer adduced the evidence of sales of estate lands, namely:

(a) Ladang Tikam Batu in the district of Kuala Muda was sold on 21 April 1983 (about 12 months before the acquisition date), at RM9,605.42 per acre for an area of 779 acres; and

(b) Tanjung Pauh Estate in the district of Kubang Pasu was sold on 16 May 1983 (about eleven months before the acquisition date), at RM8,279.67 per acre for an area of 2147.85 acres.

As comparable (b) is located too far away (about 75km) from the subject lot, I shall confine my observation only to comparable (a). In my opinion, this is an acceptable comparable. First, this comparable is an estate land. It has been held that estate land should be compared with estate land (*Siah Brothers Plantation Sdn Bhd v Pentadbir Tanah dan Daerah Kuantan* [1993] 3 MLJ 51). Secondly, although this comparable is about half the size of the subject lot, it could nevertheless, like the subject lot, still be fairly described as a big lot. Thirdly, the sale, which took place in April 1983, was quite recent — about 12 months prior to the material date.

A criticism made by the learned counsel for the applicant is that this comparable is located too far away, about 25km from the subject lot. With respect, I do not think that by modern standards, considering the efficient modes of transport available nowadays, 25km is too far a distance, especially when dealing with large estates. In any case, the government valuer had explained in evidence that he had chosen comparable (a) because of the absence of recent sales of estate land in the immediate vicinity of the subject lot.

Based on comparable (a), I arrive at the value of RM11,000 per acre for the scheduled land. This is how I arrive at this value. First, in order to make the arithmetical calculation easier, I round up the value of comparable (a) from RM9,605.42 per acre to RM10,000 per acre. An upward adjustment of 10% is given for the time factor. Another 10% upward adjustment is given for the size of the scheduled land. Therefore, there is a total of 20% upward adjustment. Since the scheduled land did not have a separate title, there is a downward adjustment of 10%. This gives a net adjustment of 10% upward adjustment (20%–10%). By increasing the base value of RM10,000 by 10%, I arrive at the value of RM11,000.

Accordingly, the award of the Collector shall be increased from RM9,000 per acre to RM11,000 per acre, with interest at the rate of 8%pa from the date of possession to the date of payment. As the claim of the applicant is excessive, there shall be no order as to costs.

Order accordingly.

Reported by Isabel Liong